IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.922 OF 2005
WITH
CIVIL APPLICATION NO.1080 OF 2005

Sudhakar Tukaram Satam ..Appellant.
Vs.
Dilip Dattaram Agre ..Respondent.

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Ms. Bharati Mahant for the Appellant.
Mr. A.R. Patil, AGP for Respondent No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

23rd November, 2005.

P.C. :

The Learned Trial Judge by an order dated 19th September, 2005 confirmed the ad interim order dated 25th August, 2005 and restrained the Appellant, by an order of injunction from dispossessing the Respondent from the telephone booth that forms the subject matter of the dispute till the disposal of the suit. It is common ground between the parties that pleadings in the suit are complete and the suit is ripe for trial. Parties are agreed that they shall co-operate in the expeditious disposal of the suit and shall proceed immediately to the trial of the suit without any further loss of time.

The documents on the record to which the attention of the Court has been drawn would show that on 15th May, 1999 a lease agreement was drawn up between the parties for a term of five years in respect of the premises of Shop Nos.2 and 4. According to the Respondent, this was in order to secure a telephone connection in respect of the stall where he was to conduct business which lies outside the shop of the Appellant – Defendant and it was, therefore, that the aforesaid agreement was entered into. There is no dispute between the parties that the Respondent did in fact carry on the business of a PCO booth for a period of over five years. The letters of the Appellant dated 11th February, 2005, 11th March, 2005 and 19th May, 2005 (pages 119, 120 and 115 respectively of the paper book) will clearly show that even accordingly to the Appellant it was the Respondent who was in possession of the premises. In the first letter dated 11th February, 2005, the Appellant in a letter to the Energy Minister complained that the Respondent had not handed back possession of the stall and that he was seeking to continue his occupation on one pretext or the other. In the second letter dated 11th March, 2005, a request was made to the police authorities to the effect that

possession of the stall should be restored to the Appellant. In the third letter dated 19th May, 2005 the Appellant sought the intervention of the police to demolish the stall which was in the possession of the Respondent. These letters will prima facie demonstrate that it was the Respondent who was in possession. The order of the Learned Trial Judge protects the possession of the Respondent. The impugned order dated 19th September, 2005 can only mean that the possession of the Respondent should not be disturbed, save and except by due process of law. Admittedly, the stall in question is not in the premises of Shop Nos.2 and 4 which belong to the Appellant, but is adjacent thereto in land belonging to the Government. The order of injunction that has been passed by the Learned Trial Judge operates only as between the Appellant and the Respondent and this shall not be construed to preclude any authority of the State from taking such steps as are necessary in accordance with law. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.